



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 8
999 18TH STREET - SUITE 300
DENVER, CO 80202-2466
Phone 800-227-8917
<http://www.epa.gov/region08>

September 19, 2003

Ref: 8ENF-L

SENT VIA CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Lynn Allen, West Region Manager
Iowa Tanklines, Inc.
9700 Emporia Street
Henderson, CO 80640

Re: In the Matter of Iowa Tanklines, Inc. Clear Creek Spill,
Dumont, Colorado, Docket No. CWA-08-2003-0094
Administrative Complaint and Notice of Opportunity
for Hearing

Dear Ms. Allen:

Enclosed is an Administrative Complaint and Notice of Opportunity for Hearing ("Complaint") filed by the U.S. Environmental Protection Agency ("EPA") against Iowa Tanklines, Inc., pursuant to its authority under section 311(b)(6)(B)(ii) of the Clean Water Act (the "Act"), 33 U.S.C. § 1321(b)(6)(B)(ii). EPA alleges in the Complaint that the discharge of approximately 8,201 gallons (195 barrels) of unleaded gasoline from a tanker into Clear Creek near Dumont, Colorado on November 9, 2001, constitutes a violation of section 311(b)(3) of the Act, 33 U.S.C. § 1321(b)(3). The Complaint proposes a penalty of \$134,500 for the alleged violation.

You have the right to a hearing to contest the factual allegations in the Complaint. If you admit the allegations, or the allegations are found to be true after you have had an opportunity for a hearing, you have the right to contest the penalty proposed in the Complaint. A copy of EPA's administrative procedures is enclosed for your review. Please note the requirements for an Answer set forth in 40 CFR §§ 22.15 and 22.38. If you wish to contest the allegations in the Complaint or the penalty proposed in the Complaint, you must file a written Answer within thirty (30) days of receipt of the enclosed Complaint with the EPA Regional Hearing Clerk at the



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following address:

Ms. Tina Artemis, Regional Hearing Clerk (8RC)
U.S. EPA, Region VIII
999 18th Street, Suite 500
Denver, CO 80202-2466

If you fail to request a hearing, you will waive your right to formally contest any of the allegations set forth in the Complaint. If you fail to file a written answer or pay the proposed penalty within the time limits, a default judgement may be entered pursuant to 40 CFR § 22.17. This judgement may impose the penalty proposed in the Complaint.

Whether or not you request a hearing, you may confer informally with EPA concerning the alleged violations or the amount of the proposed penalty. You have the right to be represented by an attorney at any stage of the proceedings, including any informal discussions with EPA, but it is not required. A request for an informal conference does not extend the thirty (30) day period for filing your Answer and/or requesting a hearing. Public Notice of and reasonable opportunity to comment on the proposed issuance of an order assessing a class II civil penalty is being provided pursuant to section 311(b)(6)(C) of the Act, 33 U.S.C. § 1321(b)(6)(C). If no hearing is held under section 311(b)(6)(B) of the Act, 33 U.S.C. § 1321(b)(6)(B), any person who comments on the proposed penalty assessment may participate in a hearing on the penalty if requested pursuant to section 311(b)(6)(C)(iii) of the Act, 33 U.S.C. § 1321(b)(6)(C)(iii).

If you have any questions, the most knowledgeable people on my staff regarding this matter are Amy Swanson and Jane Nakad. Ms. Swanson is in our Legal Enforcement Program and can be reached at (303) 312-6906. Ms. Nakad is in our Technical Enforcement Program, and can be reached at (303) 312- 6202.

Sincerely,

A. M. Gaydosh for/

Carol Rushin
Assistant Regional Administrator
Office of Enforcement, Compliance
and Environmental Justice

Enclosures: Complaint and Notice of Opportunity for Hearing
Consolidated Rules of Practice, 40 C.F.R. Part 22
SBREFA Information Sheet
Public Notice



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Notice of SEC Disclosure

cc: Rick George, Iowa Tanklines, Inc.
Jerry Goad, Colorado Office of the Attorney General
Howard Roitman, CDPHE



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 8**

IN THE MATTER OF)	Docket No. CWA-08-2003-0094
)	
Iowa Tanklines, Inc.)	ADMINISTRATIVE COMPLAINT AND
7722 F Street)	OPPORTUNITY TO REQUEST HEARING
Omaha, NE 68127)	
Clear Creek Release,)	Proceeding to Assess Class II
Dumont, Colorado)	Civil Penalty Under Section
)	311 of the Clean Water Act
_____ Respondent.)	for Spill Violation

AUTHORITY

1. This is a civil administrative action issued under the authority vested in the Administrator of the Environmental Protection Agency ("EPA") by section 311(b)(6)(B)(ii) of the Clean Water Act ("CWA" or "the Act"), 33 U.S.C. § 1321(b)(6)(B)(ii), as amended by the Oil Pollution Act of 1990. The Administrator has properly delegated this authority to the undersigned EPA official. This proceeding is governed by the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits ("Consolidated Rules") set forth at 40 CFR Part 22, a copy of which is enclosed.

GENERAL ALLEGATIONS

2. Respondent Iowa Tanklines, Inc., ("Iowa Tanklines" or "Respondent"), is a corporation organized and existing under the laws of the State of Nevada.

3. Respondent is a "person" within the meaning of sections 311(a)(7) and 502(5) of the Act, 33 U.S.C. §§ 1321(a)(7) and 1362(5).



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4. Respondent is an owner and/or operator of a tanker truck (a 2001 Kenworth tractor owned by MHC Truck Leasing, Inc., Unit no. 561712, and a 1990 Heil cargo tank trailer owned by Respondent, unit no. 133) involved in a motor vehicle accident that occurred on the north side of the westbound lanes of I-70 at approximately mile marker 235 near Dumont, Clear Creek County, Colorado, on November 9, 2001. The truck and trailer overturned and came to rest upside-down on a drop inlet for a storm water culvert.

5. Respondent's tanker truck (hereinafter "the facility") is an "onshore facility" within the meaning of sections 311(a)(6) and (10) of the Act, 33 U.S.C. §§ 1321(a)(6) and (10), and 40 CFR § 112.2.

6. Iowa Tanklines is a common carrier engaged in the transportation of liquid bulk commodities including the following petroleum products: gasoline, diesel and fuel oils.

7. Petroleum and fuel oil are oils within the meaning of "oil" as defined at section 311(a)(1) of the Act, 33 U.S.C. § 1321(a)(1).

8. Section 311(b)(3) of the Act, 33 U.S.C. § 1321(b)(3), prohibits the discharge of oil into or upon the navigable waters of the United States and adjoining shorelines in such quantities as may be harmful to the public health or welfare or the environment.

9. To implement section 311(b)(3) of the Act, 33 U.S.C. § 1321(b)(3), EPA has promulgated a regulation, set forth at 40 C.F.R. § 110.3, specifying what quantities of oil may be harmful to the public health or welfare or the environment. That regulation provides that such quantities of oil include discharges that either violate applicable water quality standards, or cause a film or sheen upon or discoloration of the surface of the water or adjoining shorelines, or cause



a sludge or emulsion to be deposited beneath the surface of the water or upon the adjoining shorelines.

10. At approximately 2:00 am on November 9, 2001, Respondent's facility discharged an estimated 8,201 gallons¹ (or 195 barrels) of unleaded gasoline into or upon Clear Creek and adjoining shorelines.

11. Clear Creek is a tributary to the South Platte River and a "navigable water" and "water of the United States" within the meaning of section 502(7) of the Act, 33 U.S.C. § 1362(7), and 40 CFR § 110.1.

12. Six public water supply system drinking water wells for the City of Black Hawk, Colorado, are located downstream from the spill site.

13. The South Platte River and Clear Creek are used for agricultural, commercial, industrial, and recreational purposes.

14. The spill killed approximately 17,000 fish (infant and adult).

15. Respondent's November 9, 2001, discharge of 8,201 gallons of unleaded gasoline from its facility caused a violation of Colorado water quality standards and caused a film or sheen upon or discoloration of Clear Creek and its adjoining shorelines and caused a sludge or emulsion to be deposited beneath the surface of the water or upon the adjoining shorelines, and therefore, was in a quantity that has been determined may be harmful under 40 CFR § 110.3 in violation of section 311(b)(3) of the Act, 33 U.S.C. § 1321(b)(3).

¹ The Bill of Lading indicates that the tanker was transporting 8,301 gallons of unleaded gasoline. Respondent reported that 100 gallons of gasoline were recovered from the trailer during the emergency response operations.



16. Respondent excavated gasoline-contaminated soil from November 10 through 19, 2001. Surface water samples taken from Clear Creek in the vicinity of the spill site on December 11, 2001, identified dissolved petroleum constituents in the water and/or adjoining shorelines.

17. Section 311(b)(6)(A) of the Act, 33 U.S.C. § 1321(b)(6)(A), states in pertinent part that any owner, operator, or person in charge of any vessel, onshore facility or offshore facility (i) from which oil or a hazardous substance is discharged in violation of paragraph (3), or (ii) who fails or refuses to comply with any regulation issued under subsection (j) of this section to which that owner, operator, or person in charge is subject, may be assessed a class I or class II civil penalty by ... the Administrator.

18. As alleged herein and pursuant to section 311(b)(6)(B)(ii) of the Act, 33 U.S.C. § 1321(b)(6)(B)(ii), and 40 CFR § 19.4 Respondent is liable for civil penalties up to \$11,000 per day during which the violation continues, up to a maximum total of \$137,500 for all violations.

PROPOSED PENALTY

Based on the foregoing Allegations and pursuant to the authority of section 311(b)(6)(B)(ii) of the Act, 33 U.S.C. § 1321(b)(6)(B)(ii), Complainant proposes the assessment of administrative penalties against the Respondent in the amount of \$134,550.00 for Respondent's discharge of approximately 8,201 gallons (195 barrels) of unleaded gasoline from its facility into or upon navigable waters or waters of the U.S. in violation of section 311(b)(6)(A)(i) of the Act, 33 U.S.C. § 1321(b)(6)(A)(i).

Complainant proposes this penalty amount after considering the applicable statutory penalty factors in section 311(b)(8) of the Act, 33 U.S.C. § 1321(b)(8): Respondent's alleged



violations, the seriousness of the violations, the economic benefit to the violator resulting from the violations, the degree of culpability involved, any other penalty for the same incident, any history of prior violations, the nature, extent, and degree of success of any efforts of the violator to minimize or mitigate the effects of the discharge, the economic impact of the penalty on the violator, and any other factors as justice may require. Specifically, the proposed penalty is based on the seriousness of Respondent's discharge with major environmental impact. The spill resulted in the discharge of a large quantity of petroleum directly into Clear Creek, threatening the Town of Blackhawk's six drinking water wells located downstream and causing a large fishkill. Based on water samples taken from Clear Creek on December 11, 2001, oil remained in the water and/or adjoining shorelines at least 33 days after the spill. A minor degree of culpability was included as the discharge was the result of the Respondent's employee's or contractor's careless driving. The Respondent did not qualify for any penalty reduction based on mitigation factors or gravity adjustments. No additions were made to the proposed penalty amount based on history of violations nor was any adjustment made based on economic benefit.

TERMS OF PAYMENT FOR QUICK RESOLUTION

If Respondent does not contest the findings and penalty proposal set out above, this action may be resolved by paying the proposed penalty in full pursuant to 40 CFR § 22.18. If such payment is made within 30 calendar days of receipt of this Complaint, no Answer need be filed. For more time for payment, Respondent may file a statement agreeing to pay the penalty within 30 days of receipt of the Complaint, then pay the money within 60 days of such receipt. Payment is to be made by sending a cashier's or certified check payable to "Oil Spill Liability Trust Fund,"



with the docket number and name of the facility written on the check, to:

Jane Nakad
Technical Enforcement Program (8ENF-T)
U.S. EPA Region 8
999 18th Street, Suite 300
Denver, CO 80202-2466

Payment of the penalty in this manner does not relieve Respondent of its obligation to comply with the requirements of the statute and regulations. Payment of the penalty in this manner shall constitute consent by Respondent to the assessment of the proposed penalty and a waiver of Respondent's right to a hearing on this matter.

OPPORTUNITY TO REQUEST A HEARING

As provided in the Act, a Respondent has the right to a public hearing to contest this Complaint. If you (1) contest the factual claims made in this Complaint; (2) contest the appropriateness of the proposed penalty; and/or (3) assert that you are entitled to judgment as a matter of law, you must file a written Answer in accordance with section 22.15 and 22.38 of the Consolidated Rules within 30 calendar days after receipt of this Complaint. Your Answer must (1) clearly and directly admit, deny, or explain each of the factual allegations contained in the Complaint with regard to which you have knowledge; (2) state circumstances or arguments which are alleged to constitute grounds for defense; (3) state the facts you dispute; (4) the basis for opposing the proposed relief, and (5) specifically request an administrative hearing, if desired. Failure to admit, deny, or explain any material factual allegation in this Complaint will constitute an admission of the allegation.



The Answer and one copy must be sent to:

Tina Artemis, Regional Hearing Clerk (8RC)
U.S. EPA Region 8
999 18th Street, Suite 300
Denver, Colorado 80202-2466

and a copy must be sent to the following attorney:

Amy Swanson, Enforcement Attorney (8ENF-L)
U.S. EPA Region 8, Legal Enforcement Program
999 18th Street, Suite 300
Denver, CO 80202-2466
Telephone: (303) 312-6906

IF YOU FAIL TO REQUEST A HEARING, YOU WILL WAIVE YOUR RIGHT TO FORMALLY CONTEST ANY OF THE ALLEGATIONS SET FORTH IN THE COMPLAINT.

IF YOU FAIL TO FILE A WRITTEN ANSWER OR PAY THE PROPOSED PENALTY WITHIN THE 30 CALENDAR DAY TIME LIMIT, A DEFAULT JUDGMENT MAY BE ENTERED PURSUANT TO 40 C.F.R. § 22.17. THIS JUDGMENT MAY IMPOSE THE PENALTY PROPOSED IN THE COMPLAINT.

PUBLIC NOTICE

Pursuant to section 311(b)(6)(C) of the Act, 33 U.S.C. § 1321(b)(6)(C), the Complainant is providing public notice of and reasonable opportunity to comment on this proposed issuance of a Final Order assessing administrative penalties against you. If a hearing is held on this matter, members of the public who submitted timely comments on this proceeding have the right under section 311(b)(6)(C) of the Act, 33 U.S.C. § 1321(b)(6)(C), to be heard and present evidence at the hearing.

SETTLEMENT CONFERENCE



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The EPA encourages settlement of a proceeding at any time if the settlement is consistent with the provisions and objectives of the Act and applicable regulations and is willing to explore this possibility in an informal settlement conference. If you or your attorney, if you choose to be represented by one, have any questions or wish to have an informal settlement conference with EPA, please call Amy Swanson at (800) 227-8917, extension 6906, or (303) 312-6906. Please note that a request for, scheduling of, or participation in a settlement conference does not extend the period for filing an Answer and request for hearing as set out above. The settlement process, however, may be pursued simultaneously with the administrative litigation procedures found in the Consolidated Rules. If a settlement can be reached, its terms must be expressed in a written consent agreement, signed by the parties and incorporated into a final order signed by the Regional Judicial Officer.

**UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY, REGION 8**
Complainant.

Date: 9/19/03

A. M. Gaydosh for/
Carol Rushin
Assistant Regional Administrator
Office of Enforcement, Compliance
and Environmental Justice

Date: 9/19/03

SIGNED
Amy Swanson, Enforcement Attorney
U.S. EPA, Region 8
999 18th Street, Suite 300 (8ENF-L)
Denver, CO 80202-2466
Colorado Atty. Reg. No. 26488
Telephone: 303/312-6906
Facsimile: 303/312-6953



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CERTIFICATE OF SERVICE

The undersigned hereby certifies that the original and one copy of the COMPLAINT AND NOTICE OF OPPORTUNITY FOR HEARING was hand-carried to the Regional Hearing Clerk, EPA Region 8, 999 18th Street, Suite 300, Denver, Colorado, and that a true copy of the same was sent via certified mail to:

Lynn Allen, West Region Manager
Iowa Tanklines, Inc.
9700 Emporia Street
Henderson, CO 80640

9/22/03
Date

SIGNED
Judith McTernan

IF YOU WOULD LIKE COPIES OF THE ATTACHMENTS, PLEASE CONTACT THE REGIONAL HEARING CLERK.

THIS DOCUMENT WAS FILED IN THE RHC'S OFFICE ON SEPTEMBER 22, 2003.

